

LHB Ecology

Preliminary Ecological Appraisal

Site: Land to the South of Peewit Hill, Bursledon,
Hampshire SO31 8BP

Client: A2 Architecture & Development LTD

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Limitations

This report has been prepared exclusively for the use of the above-named client or their agents. Site assessment and reports have been carried out for the client in accordance with written agreement and with the diligence and skills that are typical of an ecological consultant.

The conclusions and subsequent recommendations contained in this report are partly based upon information provided by third parties. Information obtained from third parties has not been independently verified by LHB Ecology.

Any third-party usage of the report will require prior written agreement from LHB Ecology.

Any assessments made are based upon current site condition with the assumption that the site will continue to be used for the current purpose without significant change prior to any development. Findings and recommendations within this report are based on the professional opinion of qualified and experienced ecological consultants and do not constitute professional legal advice.

Guidelines

This assessment has been designed to meet:

- Bat Conservation Trust (2023): Bat Surveys for Professional Ecologists — Good Practice Guidelines, 4th edition; and
- British Standard 42020 (2013) 'Biodiversity – Code of Practice for Planning and Development'.
- Chartered Institute of Ecology and Environmental Management (2017). Guidelines for Preliminary Ecological Appraisal. 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester.
- Chartered Institute of Ecology and Environmental Management (2017). Guidelines on Ecological Report Writing. Chartered Institute of Ecology and Environmental Management, Winchester.

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1.0 Executive Summary

1.1 Summary

- 1.1.1 LHB Ecology undertook an extended Phase 1 habitat survey (JNCC, 2010) to inform a Preliminary Ecological Appraisal (PEA) at Land to the South of Peewit Hill, Bursledon, Hampshire SO31 8BP (hereinafter referred to as 'the site') on 30 April 2024. This survey was completed to assess the habitats on site, to establish an ecological baseline and to determine whether ecological receptors such as protected species were likely to be present.
- 1.1.2 The site comprises a plot of land and scattered trees. The development site is bounded by residential properties and associated infrastructure and a road.
- 1.1.3 The development proposals are for the erection of two new dwellings.
- 1.1.4 The proposed development will result in an increase in residential units and an increase in recreational pressure on nearby European designated sites is expected. Mitigation will be required to offset the impacts in the form of a developer contribution.
- 1.1.5 Nearby European designated sites could be impacted by increased nutrient input as a result of the development. A nitrogen budget will need to be submitted to the Council along with any mitigation measures, where necessary.
- 1.1.6 The woodland located approximately 10 m to the north of the site could be impacted by construction site pollution, including dust and chemical pollution. In addition, construction vehicles could cause direct physical damage to the woodland. Pollution control measures including screening must be implemented during construction to protect the nearby priority habitat woodland. Trees should be protected in line with BS5837:2012.
- 1.1.7 To avoid and minimise the impacts of new lighting on bat foraging and commuting habitat, new lighting on site must follow relevant guidance (Institute of Lighting Professionals (ILP) and the Bat Conservation Trust (BCT) bats and artificial lighting guidance note 08/23).
- 1.1.8 Nesting birds could be present within trees. It is recommended that construction works are undertaken outside the nesting bird season (i.e. September – February inclusive). If this timeframe cannot be avoided, a nesting bird check will need to be completed and any active nests retained until the young have fledged.
- 1.1.9 The site was assessed to have low suitability to support reptiles. There is a small risk of reptiles being impacted by the proposed development. As such, precautionary working methods must be followed for any vegetation clearance.
- 1.1.10 Working methods will need to consider the presence of hedgehogs and badgers. Taking a best practice approach, any deep excavations should be covered overnight during works. Shallow excavations should have a scaffold board or equivalent placed in them overnight to allow any hedgehogs to escape, should they fall in.

Full details are provided in Table 5.1: Ecological constraints, conclusions and recommendations

2.0 Introduction and Context

2.1 Background

- 2.1.1 LHB Ecology undertook an extended Phase 1 habitat survey (JNCC, 2010) to inform a Preliminary Ecological Appraisal (PEA) at Land to the South of Peewit Hill, Bursledon, Hampshire SO31 8BP (hereinafter referred to as 'the site') on 30 April 2024. This survey was carried out to assess the habitats on site, to establish an ecological baseline and to determine whether ecological receptors such as protected species were likely to be present.
- 2.1.2 All land within the red line boundary was surveyed. The survey area consisted of the land that will be impacted by the proposed development including an expected zone of influence.
- 2.1.3 No previous ecological surveys have been carried out at this site by LHB Ecology or by any third parties, to the author's knowledge.
- 2.1.4 This report details the findings of the site survey and desk-based assessment.

2.2 Project Description

- 2.2.1 The development proposals are for the erection of a new dwelling.

2.3 Site Context

- 2.3.1 The site is centred on National Grid Reference SU 4804 1128 and has an area of approximately 0.05 ha. The site consists of a plot of land with scattered trees. The site is bounded by residential properties and gardens and a road. Woodland is located nearby to the north of the site. A landscape map is provided in section 4.3 and shows the context of the site in the wider landscape.
- 2.3.2 The site is situated within the village of Bursledon, Hampshire. The local landscape consists of low-density rural residential areas and scattered areas of woodland. An area of deciduous woodland is located approximately 10 m to the north of the site. Nearby residential properties have gardens with scattered mature trees. Good connectivity to and from the site into the wider landscape is present; mostly in the form of nearby woodland, leading to connected patches of woodland and habitats beyond.

2.4 Scope of the Report

- 2.4.1 This report evaluates the habitats at the site and their value to protected species. It also documents any evidence of protected species and identifies any constraints to the proposals. The report provides recommendations for further surveys and mitigation measures to comply with wildlife legislation.
- 2.4.2 The aim of the survey was to assess the types of habitats and the likelihood of protected species being present. This was achieved by:
- Carrying out a desk study using freely available resources such as Google Earth and the MAGIC online database.

- Identifying the survey site, site boundary and the zone of influence of the proposed development.
- Recording baseline information on the site and surrounding area through an extended Phase 1 habitat survey.
- Providing an outline of likely impacts on ecological receptors, based on the current development proposals.
- Providing recommendations for further surveys, such as protected species surveys, mitigation measures and ecological enhancements.

2.4.3 A Phase 1 habitat map of the site is presented in Appendix 1. The proposed plan is included in Appendix 2. A summary of relevant legislation can be found in Appendix 3.

3.0 Methodology

3.1 Desk study methodology

- 3.1.1 A biological records data search relating to the site and a surrounding 1 km radius (the study area) was not commissioned from the Local Records Centre. This is primarily due to the small scale of the development and the site location.
- 3.1.2 A review of aerial imagery from Google Earth, magic.defra.gov.uk data and OS Opendata 2023 has also been undertaken to inform the assessment. Information from these sources is referenced within the report, where necessary.

3.2 Extended Phase 1 habitat survey methodology

- 3.2.1 The survey was undertaken by Joe Slade BSc (Hons) MRSB, principal ecologist (Natural England protected species licence numbers: bats 2017-32515-CLS-CLS; great crested newt 2016-26549-CLS-CLS). The survey was undertaken in accordance with industry guidelines (JNCC, 2010) on 30 April 2024 during suitable weather conditions.
- 3.2.2 All areas of the survey site that were accessible were covered during the survey. Areas that were not accessible, either due to safety concerns or in cases where access was not provided to the surveyor were assessed based on what was observable. Any limitations that relate to a lack of access are addressed in 3.4 Limitations.
- 3.2.3 The survey looked at the vegetation present which was recorded and used to classify the habitats on site. The recorded habitats were mapped during the survey and were later digitised using GIS software to create a master map for inclusion within the PEA report. Target notes on maps provide supporting information which relates to any evidence of protected species, areas that were too small to map, habitat conditions and species composition.
- 3.2.4 The aim of the Phase 1 habitat survey is not to record all plant species present on site. A Phase 2 survey may be required in some cases to assess priority habitats.
- 3.2.5 The value and sensitivity of ecological features present on site were assessed based on the guidance given in Chartered Institute of Ecology and Environmental Management (CIEEM) Guidelines for Preliminary Ecological Appraisal (CIEEM, 2017).
- 3.2.6 Where present, any sightings of invasive / non-native plant species listed on Schedule 9 of the Wildlife and Countryside Act (1981) were recorded including their extent.
- 3.2.7 Protected species and habitats that could be affected by the proposed development were assigned levels of importance for nature conservation. The following terms are used for each level of importance (in descending importance): international, national, regional, county, local and site level.

3.3 Protected and notable species

- 3.3.1 Evidence of protected species and species of nature conservation importance was recorded if present at the time of the survey. Additionally, habitats on site were assessed for their suitability to support protected species. The findings of the desk study and the condition of the habitats on site were used along with the field survey findings to determine the presence or likely absence of protected species on site.
- 3.3.2 In accordance with the Bat Conservation Trust's best practice guidelines (Collins, 2023), the suitability of habitat features on site to support roosting bats, such as trees and buildings, was categorised as negligible, low, moderate or high. The bat suitability assessment was based on the number and type of roosting features and surrounding landscape character.

3.4 Limitations – evaluation of the methodology

- 3.4.1 The survey and subsequent evaluation of the site is preliminary and does not form a complete characterisation of the site in terms of protected and notable habitats and species. This survey provides a preliminary view of the likelihood of protected habitats and species being present and is not a replacement for detailed vegetation or protected species surveys (where necessary).
- 3.4.2 There were no limitations to the survey.

4.0 Results and Evaluation

4.1 Desk Study Results

4.1.1 A summary of desk study results is provided below.

4.1.2 The desk study methodology as outlined in 3.1 has been carried out, and any relevant findings regarding sites, habitats or species are outlined below. The findings of the desk study are incorporated into 5.0 Ecological constraints, Conclusions and Recommendations section of this report.

4.2 Designated sites

4.2.1 The MAGIC database search revealed the presence of statutory designated sites within 1 km of the site consisting of:

- Netley Common Local Nature Reserve (LNR) located approximately 960 m to the east of the site.
- Manor Farm LNR located approximately 350 m to the northeast of the site.

4.3 Landscape

4.3.1 The MAGIC database search indicated the presence of habitats within 1 km of the site which could provide important habitat for protected species. Priority habitats included large areas of deciduous woodland, the closest of which is located approximately 10 m to the north of the site. An area of lowland heathland is situated approximately 490 m to the northwest of the site. An area of lowland dry acid grassland is located approximately 600 m to the northeast of the site.

4.3.2 There is very good connectivity between the site and priority habitats in the form of nearby woodland.

4.3.3 Figure 1 (below) is the reviewed aerial imagery for the site showing the surrounding landscape and the context of the site within the landscape.



4.4 European Protected Species Licencing

4.4.1 The MAGIC database search revealed three granted European protected species mitigation licences (EPSML) located within a 1 km radius of the development site. Table 4.4 provides the MAGIC database records.

Table 4.4: Granted EPSMLs within a 1 km radius of the site

Granted EPSML reference	Distance from site	Species listed	EPSML start date	EPSML end date	Licenced activity
2019-40805-EPS-MIT	950 m to the east	Brown long-eared; common pipistrelle; soprano pipistrelle	01/09/2019	01/09/2029	Destruction of a breeding site
2015-9288-EPS-MIT	890 m to the northeast	Common pipistrelle	29/04/2015	22/04/2020	Destruction of a resting site
2014-1952-EPS-MIT	940m to the west	Common pipistrelle	12/08/2014	30/09/2015	Destruction of a resting site

4.5 Survey Results

4.5.1 The weather conditions recorded at the time of the survey are shown in Table 4.5.

Table 4.5: Weather conditions during the survey.

Survey Date: 30/04/24

Temperature	10°C
Relative Humidity	75%
Cloud Cover	20%
Wind	3 mph
Precipitation	None

4.5.2 Phase 1 habitat survey**4.5.3 Habitats**

The site habitats and supporting photographs are provided below along with their descriptions.

Scattered trees

A mature English oak *Quercus robur* is located on the northern boundary. A dead birch *Betula* sp. is located adjacent to the oak. The trees were inspected for bird nests and potential roosting features (PRFs) that bats could use.

A pile of mulched vegetation was located within the canopy of the trees.

**Scrub**

The site consists of recently cut scrub which is largely bramble *Rubus fruticosus* agg. with some gorse *Ulex europaeus*. Other plants include foxglove *Digitalis purpurea*, fennel *Foeniculum vulgare*, pendulous sedge *Betula pendula*, brome *Bromus* sp., Yorkshire fog *Holcus lanatus*, green alkanet *Pentaglottis sempervirens*, nettle *Urtica dioica* and garlic mustard *Alliaria petiolata*.



Fence

Close-panel timber fencing is present on the southern, western and eastern boundary.

**4.5.1 Evidence of protected or notable species**

No evidence of protected species activity was present.

5.0 Ecological constraints, conclusions and recommendations

- 5.1.1 Table 5.1 below details the identified ecological constraints based on the proposed development. Recommendations are provided such as further survey work and mitigation measures to address any foreseen impacts.
- 5.1.2 The findings of the survey are valid for a period of two years from the date the survey was completed. After two years the site may need to be resurveyed to determine whether there have been any significant changes and to inform the planning process.

Table 5.1: Ecological constraints, conclusions and recommendations

Ecological receptor	Ecological constraints and conclusions	Recommendations
Designated sites		
Netley Common and Manor Farm LNRs	The closest designated site is situated approximately 350 m from the development site. Both sites are considered to be well outside of the proposed development's zone of influence. No impacts are anticipated.	None.
European Designated Sites: Solent Maritime Special Area of Conservation (SAC); Solent and Southampton Water Special Protection Area (SPA) and Ramsar Site.	The European designated sites form part of the National Site Network and are located approximately 1.6 km to the east of the site at their closest point. The sites have importance for nature conservation at international-level. As such, any likely significant effects on the designated sites must be considered.	The Local Planning Authority may require mitigation to address any likely significant effects arising from recreational pressure on the European designated sites. This can be in the form of a developer contribution. The Local Planning Authority will require a nutrient budget calculation to be submitted with the planning application along with mitigation measures to offset a positive nutrient load, where necessary.

Ecological receptor	Ecological constraints and conclusions	Recommendations
	As the proposed development will result in a net increase in residential units, an increase in recreational pressures on these designated sites is expected.	
Habitats		
Deciduous woodland, scrub and scattered trees.	No priority habitats are located on site. There is deciduous woodland located ~ 10 m to the site north of the boundary. The priority habitat woodland could be impacted by construction activities including pollution entering the woodland and direct physical impacts from vehicles. The deciduous woodland priority habitat is considered to be of local-level importance for nature conservation. The scattered trees are important for birds and other wildlife, particularly the mature English oak tree located on the northern boundary. The trees have site-level importance for nature conservation. The scrub on site has been cleared to ground level. As such, it is not considered to be of value to wildlife in its current state. Due to the small size of the site, and the location of the site, the loss of the scrub habitat is unlikely to have resulted in significant impacts to wildlife.	No further surveys. The woodland located approximately 10 m to the north of the site could be impacted by construction site pollution, including dust and chemical pollution. In addition, construction vehicles could cause direct physical damage to the woodland. Pollution control measures including screening must be implemented during construction to protect the nearby priority habitat woodland. Trees should be protected in line with BS5837:2012. The English oak tree will be retained. Ecological enhancements for the site are detailed in section 6.0 Enhancements. The enhancement measures and retained habitats have been designed to support a net gain in biodiversity post-development.

Ecological receptor	Ecological constraints and conclusions	Recommendations
Protected Species		
Badger	No evidence of badger activity was recorded on site such as latrines or foraging marks. Badgers could be present in nearby suitable habitat. The site was assessed to have low habitat value to support badgers. <i>Badger protection: Badgers and their setts are protected under the Protection of Badgers Act 1992 ("the PBA 1992").</i>	No further surveys. A precautionary working method will be implemented during construction to protect foraging badgers, including the following measures: - Any excavations will be covered overnight, or a ramp will be installed to enable any trapped animals to escape. - Any chemicals or pollutants used or created by the development should be stored and disposed of correctly according to COSHH regulations. In the unlikely event that a badger sett is identified, works must cease and advice must be sought from a suitably qualified ecologist.
Bats	The trees on site did not have potential roosting features which bats could roost in. Although the proposed development will result in a loss of scrub habitat resulting in a reduction of invertebrate prey, this is likely to be of little consequence to local bats due to the presence of extensive foraging habitat situated nearby.	To avoid and minimise the impacts of new lighting on bat foraging and commuting habitat, the following measures will be implemented on the developed site (in line with Institute of Lighting Professionals (ILP) and the Bat Conservation Trust (BCT) bats and artificial lighting guidance note 08/23): ➤ <i>All luminaires should lack UV elements when manufactured. Metal halide, compact fluorescent sources should not be used.</i>

Ecological receptor	Ecological constraints and conclusions	Recommendations
	New lighting on site could impact bat foraging activity to the north of the site. <i>Bat protection: Bats are protected under The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and the Wildlife and Countryside Act 1981 (as amended).</i>	➤ <i>LED luminaires should be used where possible due to their sharp cut-off, lower intensity, good colour rendition and dimming capability.</i> ➤ <i>A warm white spectrum (ideally <2700Kelvin) should be adopted to reduce blue light component.</i> ➤ <i>Luminaires should feature peak wavelengths higher than 550nm to avoid the component of light most disturbing to bats (Stone, 2012).</i> ➤ <i>Internal luminaires can be recessed where installed in proximity to windows to reduce glare and light spill.</i> ➤ <i>The use of specialist bollard or low-level downward directional luminaires to retain darkness above can be considered. However, this often comes at a cost of unacceptable glare, poor illumination efficiency, a high upward light component and poor facial recognition, and their use should only be as directed by the lighting professional.</i> ➤ <i>Column heights should be carefully considered to minimise light spill.</i> ➤ <i>Only luminaires with an upward light ratio of 0% and with good optical control should be used – See ILP Guidance for the Reduction of Obtrusive Light.</i> ➤ <i>Luminaires should always be mounted on the horizontal, i.e. no upward tilt.</i>
Birds	No active bird nests were present on site during the survey. Birds could nest within the trees on site.	All in-use bird's nests and their contents are protected from damage or destruction, any building works should be undertaken outside the

Ecological receptor	Ecological constraints and conclusions	Recommendations
	The site was assessed to have low habitat value for nesting birds. Active bird nests could be impacted by the proposed development resulting in nest abandonment. <i>Bird protection: It is an offence to damage or destroy active nests under the WCA 1981.</i>	period 1st March to 31st August. If this time frame cannot be avoided, a close inspection of the vegetation surrounding the development site and the shed should be undertaken immediately prior to works commencing. Work should not be carried out within 5 m of any in-use nest and with an Ecological Clerk of Works present. Standard planning conditions can be applied to ensure this.
Hazel dormouse	There is no woodland or other suitable dormouse habitat on site. The site was assessed to have negligible habitat value to support dormice. <i>Hazel dormouse protection: Hazel dormouse is protected in the UK under the Wildlife and Countryside Act, 1981. It's a Priority Species under the UK Post-2010 Biodiversity Framework and is listed as a European Protected Species under Annex IV of the European Habitats Directive.</i>	No further surveys required.
Reptiles	The scrub on site has been cleared in recent months and the site in its current state has limited suitability to support reptiles. Reptiles, such as slow worm <i>Anguis fragilis</i> could enter the site from nearby residential gardens. The site was assessed to have low habitat value for common species of reptile.	The following mitigation is recommended to prevent harm to any reptiles that may happen to be present within the development area. Pre-Development Clearing a) Before any development, the ground flora in the immediate vicinity of the building site will be strimmed down to 300 mm. b) Rest period of at least 4-6 hours

Ecological receptor	Ecological constraints and conclusions	Recommendations
	Common reptile species could be present on-site during development works. As such, there is a risk of reptiles being injured or killed in the absence of mitigation. <i>Reptile protection: Protected under the WCA 1981.</i>	c) Strimming of remaining flora to ground level, to be maintained for the duration of the development. d) If at any other point reptiles are recorded, operations should cease immediately until further advice has been sought from a suitably experienced ecologist.
Amphibians	No ponds were present on site and the nearest pond is situated approximately 260 m from the site. Although the nearby pond could support protected species of amphibians, it is situated sufficiently far away from the site that amphibians are unlikely to enter the site. As such, amphibians are highly unlikely to be present on site. The site was assessed to have negligible suitability to support amphibians. No impacts to protected species of amphibians are foreseen. <i>Amphibian protection: Smooth newt, palmate newt, common frog and common toad are included in Section 9(5) of the Wildlife and Countryside Act 1981 ("the WCA 1981"). Common toad is also a Priority Species under the Natural Environment and Rural Communities Act 2006 ("the NERC Act"). Great crested newts (GCN) are protected under WCA 1981 and The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ("the Habitats</i>	No further surveys required. In the unlikely event that of an amphibian being found, works must cease and advice must be sought from a suitably qualified ecologist.

Ecological receptor	Ecological constraints and conclusions	Recommendations
	<i>Regulations”) and are a European Protected Species (EPS). GCN is a Priority Species under the NERC Act.</i>	
Hedgehog	The cleared scrub on site provides limited suitable habitat for hedgehog. Due to the presence of nearby woodland and residential gardens located nearby, hedgehogs could enter the site. Hedgehogs could become trapped in excavations during the proposed development should they pass through the site. The site was assessed to have low habitat value to support hedgehogs. <i>Hedgehog protection: Protected under WCA 1981 (as amended).</i>	Working methods will need to consider the presence of hedgehogs. Taking a best practice approach, any deep excavations should be covered overnight during works. Shallow excavations should have a scaffold board or equivalent placed in them overnight to allow any hedgehogs to escape, should they fall in, and all chemicals should be stored securely.
Invasive non-native species		
None present.	None.	None.

6.0 Enhancements

- 6.1.1 The following enhancements have been designed to achieve a net gain in biodiversity post-development. The following enhancements are suitable, achievable and are specific to the site:

- Installation of a bat brick within the fabric of the building during construction or erect a bat box on a tree. Bat boxes should be made from woodcrete which is durable and has a long lifespan. Integrated bat boxes must be installed high on the building, close to the eaves and away from artificial sources of light. Bat boxes on trees must be installed ~ 3 m high, facing south or southwest, with a clear flight path to the entrance.
- 1 x small hole nest box to be erected on a mature tree. This should be built from woodcrete. The box must be positioned facing northeast and approximately 3 m above the ground with a clear flight path to the entrance.
- New native tree and shrub planting.
- New native species hedgerows.

7.0 Bibliography

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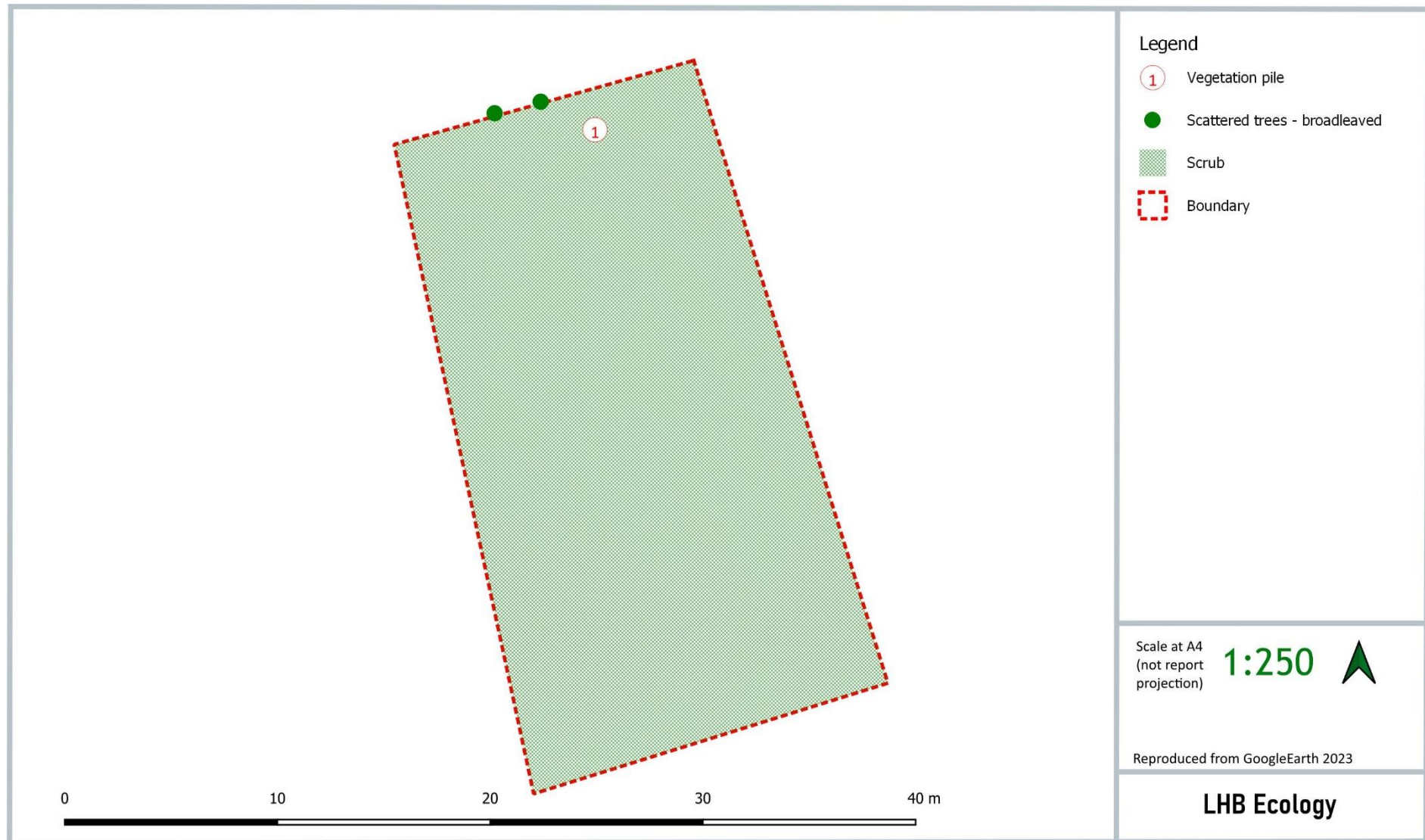
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Appendix 1 – Preliminary Ecological Appraisal Survey Map



Appendix 2 – Proposed plan



Appendix 3 – Legislation

Legal protection

The Wildlife and Countryside Act (WCA) 1981 (as amended)

The Wildlife and Countryside Act (WCA) 1981 (as amended) implements the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and implements the species protection requirements of EC Birds Directive 2009/147/EC on the conservation of wild birds in Great Britain (the birds Directive). The WCA 1981 has been subject to a number of amendments, the most important of which are through the Countryside and Rights of Way (CROW) Act (2000) and Nature Conservation (Scotland) Act 2004.

Bats

All species are fully protected by Habitats Regulations 2010 as they are listed on Schedule 2. Regulation 41 prohibits:

- Deliberate killing, injuring or capturing of Schedule 2 species (e.g. all bats)
- Deliberate disturbance of bat species in such a way as:
 - To impair their ability to survive, breed, or reproduce, or to rear or nurture young;
 - To impair their ability to hibernate or migrate
 - To affect significantly the local distribution or abundance of the species
- Damage or destruction of a breeding site or resting place

Bats are afforded the following additional protection through the WCA as they are included on Schedule 5:

- Intentional or reckless disturbance (at any level)
- Intentional or reckless obstruction of access to any place of shelter or protection

Significance for developments:

Works which are liable to affect a bat roost or an operation which are likely to result in an illegal level of disturbance to the species will require a European protected species mitigation licence. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures.

Birds

With certain exceptions, all birds, their nests and eggs are protected under Sections 1-8 of the WCA. Among other things, this makes it an offence to:

- Intentionally (or recklessly in Scotland) kill, injure or take any wild bird
- Intentionally (or recklessly in Scotland) take, damage or destroy (or, in Scotland, otherwise interfere with) the nest of any wild bird while it is in use or being built
- Intentionally take or destroy an egg of any wild bird

- Sell, offer or expose for sale, have in his possession or transport for the purpose of sale any wild bird (dead or alive) or bird egg or part thereof.
- Intentionally or recklessly obstruct or prevent any wild bird from using its nest (Scotland only)

Certain species of bird, for example the barn owl, bittern and kingfisher receive additional protection under Schedule 1 of the WCA and Annex 1 of the European Community Directive on the Conservation of Wild Birds (2009/147/EC) and are commonly referred to as “Schedule 1” birds.

This affords them protection against:

- Intentional or reckless disturbance while it is building a nest or is in, on or near a nest containing eggs or young
- Intentional or reckless disturbance of dependent young of such a bird
- In Scotland only, intentional or reckless disturbance whilst lekking
- In Scotland only, intentional or reckless harassment

Significance for developments:

Works should be planned to avoid the possibility of killing or injuring any wild bird or damaging or destroying their nests. The most effective way to reduce the likelihood of nest destruction in particular is to undertake work outside the main bird nesting season which typically runs from March to August. Where this is not feasible, it will be necessary to have any areas of suitable habitat thoroughly checked for nests prior to vegetation clearance.

Schedule 1 birds are additionally protected against disturbance during the nesting season. Thus, it will be necessary to ensure that no potentially disturbing works are undertaken in the vicinity of the nest. The most effective way to avoid disturbance is to postpone works until the young have fledged. If this is not feasible, it may be possible to maintain an appropriate buffer zone or standoff around the nest.

Herpetofauna (Amphibians and reptiles)

The sand lizard *Lacerta agilis*, smooth snake *Coronella austriaca*, natterjack toad *Epidalea calamita*, pool frog *Pelophylax lessonae* and great crested newt *Triturus cristatus* receive full protection under Habitats Regulations through their inclusion on Schedule 2. Regulation 41 prohibits:

Deliberate killing, injuring or capturing of Schedule 2 species

Deliberate disturbance of species in such a way as:

to impair their ability to survive, breed, or reproduce, or to rear or nurture young;

to impair their ability to hibernate or migrate

to affect significantly the local distribution or abundance of the species

Damage or destruction of a breeding site or resting place

With the exception of the pool frog, these species are also listed on Schedule 5 of the WCA and they are additionally protected from:

Intentional or reckless disturbance (at any level)

Intentional or reckless obstruction of access to any place of shelter or protection

Selling, offering or exposing for sale, possession or transporting for purpose of sale.

Other native species of herpetofauna are protected solely under Schedule 5, Section 9(1) & (5) of the WCA, i.e. the adder *Vipera berus*, grass snake *Natrix natrix*, common lizard *Zootoca vivipara* and slow-worm *Anguis fragilis*. It is prohibited to intentionally or recklessly kill or injure these species.

Effects on development works

A European Protected Species Mitigation (EPSM) Licence issued by the relevant countryside agency (e.g. Natural England) will be required for works liable to affect the breeding sites or resting places amphibian and reptile species protected under Habitats Regulations. A licence will also be required for operations liable to result in a level of disturbance which might impair their ability to undertake those activities mentioned above (e.g. survive, breed, rear young and hibernate). The licences are to allow derogation from the relevant legislation, but also to enable appropriate mitigation measures to be put in place and their efficacy to be monitored.

Although not licensable, appropriate mitigation measures may also be required to prevent the intentional killing or injury of adder, grass snake, common lizard and slow worm, thus avoiding contravention of the WCA.

Hazel dormouse

Hazel dormouse *Muscardinus avellanarius* is protected under Schedule 5 of the WCA 1981 against intentional killing or injuring, and under Schedule 2 of the Habitats Regulations, making them an EPS. It is an offence to damage, destroy or block access to their places of shelter or disturb them at their places of shelter. Hazel dormouse is also listed as a Priority Species under the NERC Act.

Significance for developments:

Works which are liable to affect a dormice habitat or an operation which are likely to result in an illegal level of disturbance to the species will require a European Protected Species Licence (EPSL) issued by the relevant countryside agency. The licence is to allow derogation from the legislation through the application of appropriate mitigation measures and monitoring.

NATIONAL PLANNING POLICY (ENGLAND)

National Planning Policy Framework

The National Planning Policy Framework promotes sustainable development. The Framework specifies the need for protection of designated sites and priority habitats and species. An emphasis is also made on the need for ecological infrastructure through protection, restoration and re-creation. The protection and recovery of priority species (considered likely to be those listed as UK Biodiversity Action Plan priority species) is also listed as a requirement of planning policy.

In determining a planning application, planning authorities should aim to conserve and enhance biodiversity by ensuring that: designated sites are protected from harm; there is appropriate mitigation or compensation where significant harm cannot be avoided; opportunities to incorporate biodiversity in and around developments are encouraged; and planning permission is refused for development resulting in the loss or deterioration of irreplaceable habitats including aged or veteran trees and also ancient woodland.

The Natural Environment and Rural Communities Act 2006 and the Biodiversity Duty

Section 40 of the Natural Environment and Rural Communities (NERC) Act, 2006, requires all public bodies to have regard to biodiversity conservation when carrying out their functions. This is commonly referred to as the 'biodiversity duty'.

Section 41 of the Act (Section 42 in Wales) requires the Secretary of State to publish a list of habitats and species which are of 'principal importance for the conservation of biodiversity.' This list is intended to assist decision makers such as public bodies in implementing their duty under Section 40 of the Act. Under the Act these habitats and species are regarded as a material consideration in determining planning applications. A developer must show that their protection has been adequately addressed within a development proposal.

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